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April 22, 2019

**Via Electronic Filing**

Jocelyn Boyd  
Chief Clerk  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, SC 29211

Re: **Ecoplexus, Inc. vs. South Carolina Electric & Gas Company**  
**Docket No. 2019-130-E**

Dear Ms. Boyd:

On behalf of South Carolina Electric & Gas Company ("**SCE&G**"), I respectfully submit this letter to respond to Ecoplexus, Inc.'s ("**Ecoplexus**") letter to the Commission, dated April 19, 2019, (the "**Letter**"), and to request the Public Service Commission of South Carolina (the "**Commission**") take expedited action in the above-captioned docket and deny the Motion to Maintain Status Quo submitted by Ecoplexus on April 15, 2019 (the "**Motion**"). SCE&G will be filing its full Response in Opposition to the Motion to Maintain Status Quo, as allowed under S.C. Code § 103-829, on or before April 25, 2019.

In the Letter, Ecoplexus purports to set forth the procedural history of this docket and requests expedited Commission action in granting the Motion. The Letter is attached as **Attachment A**. The arguments cited therein make clear that Ecoplexus is incorrect in its understanding of the Commission-approved South Carolina Generator Interconnection Procedures, Forms and Agreements ("**South Carolina Standard**") and the Interconnection Agreements it executed with SCE&G ("**IAs**"). The South Carolina Standard and the IAs are attached as **Attachments B** and **C**, respectively.

It is undisputed that Ecoplexus has not paid the first milestone payment under either IA (collectively, the "**Missed Milestone Payments**")—those payments were due on or before April 16, 2019. However, Ecoplexus contends that the IAs were not immediately terminated as a result of the Missed Milestone Payments because, essentially, missing such payments constitutes a "Default" under each IA, which would mean that Ecoplexus is entitled to a cure period within which to make such payments.

This position is incorrect under a plain reading of the IAs. The Missed Milestone Payments are not governed by Section 7.6 of the IAs. Indeed, Ecoplexus fails to acknowledge critical governing language in Section 6.2 of each IA:

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The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this [IA]. A Party's obligations under this provision may be extended by agreement, *except for timing for Payment or Financial-Security related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the [Procedures to the South Carolina Standard]*.

(emphasis added)

Section 5.2.4 of the Procedures to the South Carolina Standard makes clear that where milestone payments are required prior to the “start of design, equipment procurement and construction” of the facilities and upgrades contemplated by the IAs—as were the Missed Milestone Payments—such payments must be submitted within 45 business days of the date Ecoplexus signs the IAs. If such payments are not received within that window, the South Carolina Standard mandates that the requests for interconnection must be “deemed withdrawn.” This language is in further conformance with Appendix 2 of the IAs, as cited in SCE&G’s notices of termination dated April 17, 2019.

Ecoplexus signed each IA on February 11, 2019. This means that the payments must have been received no later than April 16, 2019—the expiration of the 45 business-day window and the due date specified in the IAs. Ecoplexus did not submit either payment. Therefore, its requests for interconnection were “deemed withdrawn,” which resulted in the immediate termination of the IAs.

Ecoplexus attempts to convince the Commission that SCE&G is employing a novel interpretation of the default provisions in the IAs in order to discriminatorily terminate the IAs. This is simply not the case. As the Commission is aware, other IAs have terminated automatically due to failure to make such milestone payments.

Indeed, the IAs were terminated automatically pursuant to the Commission’s Procedures in the South Carolina Standard and the terms of the IAs because Ecoplexus did not comply with the terms of an obligation that it negotiated not once, but twice. As discussed above, pursuant to the South Carolina Standard, when Ecoplexus let the close of business pass on April 16, 2019, and did not submit either payment, its requests for interconnection were “deemed withdrawn” and the IAs, as a result, terminated. SCE&G had no duty to take affirmative action to terminate the IAs.

Furthermore, SCE&G has well over 50 active projects in its queue behind the Ecoplexus projects. Ecoplexus is asking this Commission and SCE&G to ignore (i) its failure to make the Missed Milestone Payments, (ii) the express terms of the Procedures of the South Carolina Standard, and (iii) the terms of the IAs. SCE&G must follow the terms of the IAs and the corresponding Procedures to the South Carolina Standard—otherwise, each and every developer with a lower queue position would have reason to complain to the Commission that SCE&G violated the Commission’s rules and requirements. Contrary to the claims of discriminatory treatment made by Ecoplexus, SCE&G is actually treating Ecoplexus’s failure to meet its obligations as it would any other developer. In reality, it is Ecoplexus that is requesting special and/or discriminatory treatment by asking the Commission to make an exception and ignore the requirements of the IAs and Section 5.2.4 of the Procedures in the South Carolina Standard, all to the detriment of lowered-queued projects.

Ecoplexus is also incorrect in stating that simply filing the Motion relieves it of its obligation to make the Missed Milestone Payments. There is no language in the IAs, the Rules

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of the Public Service Commission, or the Procedures to the South Carolina Standard that provide for such relief, and the Commission has not ruled on the Motion.

Accordingly, SCE&G respectfully requests that the Commission deny the Motion in an expedited manner.

Sincerely,



J. Ashley Cooper

JAC  
Attachments

**Attachment A**

**Attachment B**

**Attachment C**